



GENERAL SERVICES ADMINISTRATION

48 CFR Parts 538 and 552

[GSAR Case 2020-G537; Docket No. 2022-0008; Sequence No. 1]

RIN 3090-AK32

General Services Administration Acquisition Regulation (GSAR); Order Level Material Clarifications

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to remove unnecessary language regarding approvals and travel and to correct citation and acronym references relating to order level materials.

DATES: *Effective:* **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*.]**

FOR FURTHER INFORMATION CONTACT: Ms. Megan Huppee or Mr. Bryon Boyer, GSA Acquisition Policy Division, for clarification of content at gsarpolicy@gsa.gov. For information pertaining to status or publication

schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR Case 2020-G537.

SUPPLEMENTARY INFORMATION:

I. Background

Order Level Materials (OLMs) are supplies and/or services acquired in direct support of an individual task or delivery order placed against a Federal Supply Schedule (FSS) contract or FSS blanket purchase agreement (BPA), when the supplies and/or services are not known at the time of FSS contract or FSS BPA award. OLMs must be acquired following the procedures in GSAR subpart 538.72. OLMs are currently approved for 59 subcategories under FSS contracts, see <https://www.gsa.gov/olm>. The GSAR currently requires the Senior Procurement Executive's (SPE) authorization for further use of OLMs under FSS. GSA is removing this requirement from the GSAR to provide revised internal operating guidance in the non-regulatory GSA Acquisition Manual (GSAM).

GSA is removing references from the OLM clause at 552.238-115 to the Federal Travel Regulation (FTR) because those references unnecessarily conflate travel as being an order level material and complicate the procedures for ordering activities and contracting officers.

GSA is also updating the GSAR to accurately reflect terminology, acronyms, citations, and references in conformance with the new consolidated FSS schedule

procedures (more information available at:

<https://www.gsa.gov/schedule>).

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.)

Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

After an internal review of existing policy, GSA is removing the requirement for GSA SPE authorization for use of OLMs on FSS, because it is unnecessary and administratively burdensome to the agency. Revised operating guidance which will provide for a lower level of approval, will now be provided in the non-regulatory GSAM, because these are internal procedures only, and as a result references to changes to OLM procedures are removed from the GSAR.

GSAR clause 552.238-115, Special Ordering Procedures for the Acquisition of Order-Level Materials prescribes procedures for including OLMs when placing an order against an FSS contract or FSS BPA and references travel. The reference to travel in the clause, implying that it is an OLM, has caused confusion for contracting officers. To simplify acquisition procedures, this final rule removes travel from the OLM clause to allow ordering activities and contractors to include travel at the order level in

accordance with Federal Acquisition Regulations Part 31 and may also include requirements from the FTR.

IV. Executive Order 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by OMB not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

OIRA has determined that this rule is not a major rule under 5 U.S.C. 804(2). Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (codified at 5 U.S.C. 801-808), also known as the Congressional Review Act or CRA, generally provides that before a "major rule" may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each

House of the Congress and to the Comptroller General of the United States. The General Services Administration will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the CRA cannot take effect until 60 days after it is published in the Federal Register.

VI. Notice for Public Comment

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because it does not have a significant effect or impose any new requirements on contractors or offers, the rule merely corrects citation references,

removes confusing references for travel, and removes inconsistent language for authorizations for OLMs.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section VI. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 538 and 552

Government procurement.

Jeffrey A. Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy,
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Therefore, GSA amends 48 CFR parts 538 and 552 as set forth below:

1. The authority citation for 48 CFR parts 538 and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 538—FEDERAL SUPPLY SCHEDULE CONTRACTING

538.7201 [Removed and Reserved]

2. Remove and reserve section 538.7201.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Amend section 552.238-115 by—

a. Revising the date of the clause;

b. In paragraph (a), in the definition of "Order-level materials" by removing the words "*materials* means" and adding "*materials*, as used in this clause" and in the third sentence removing the phrase "this section" and adding the phrase "this clause" in its place;

c. Revising paragraph (d) (2);

d. Removing from paragraph (d) (4) the phrase "FSS contract", and adding the phrase "FSS Contract," in its place.

e. Removing from paragraph (d) (6) the phrase "follow procedures" and adding the phrase "follow the procedures" in its place;

f. Removing from paragraph (d) (7) (i) introductory text the word "contractor" and adding the word "Contractor" in its place;

g. Removing from paragraph (d) (7) (i) (A) the phrase "contractor under FAR 52.212-4 Alt I (i) (1) (ii) (A)" and adding the phrase "Contractor under paragraph (i) (1) (ii) (A) of FAR clause 52.212-4 Alternate I" in its place;

h. Removing from paragraph (d) (7) (i) (B) the word "contractor" and adding the word "Contractor" in its place wherever it appears, and removing the word "its";

i. Revising paragraph (d) (7) (i) (C);

j. Removing from paragraph (d) (7) (iii) the phrase "FAR 52.212-4 (i) (1) (ii) (D) (2) Alternate I" and adding the phrase "paragraph (i) (1) (ii) (D) (2) of FAR clause 52.212-4 Alternate I" in its place;

k. Removing from paragraph (d) (9) the phrases "by GSA" and "compliance with the IFF" and adding the phrases "by GSA (Federal Supply Schedules)" and "compliance with the Industrial Funding Fee (IFF)" in their places respectively;

l. Removing from paragraph (d) (10) introductory text the phrase "OLMs" and adding the phrase "Order-level materials" in its place;

m. Removing from paragraph (d) (10) (ii) the phrase "FSS Schedule Pricelists" and adding "Federal Supply Schedule (FSS) Price Lists" in its place; and

n. Removing paragraph (d) (11).

The revisions read as follows:

552.238-115 Special Ordering Procedures for the Acquisition of Order-Level Materials

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SPECIAL ORDERING PROCEDURES FOR THE ACQUISITION OF ORDER-LEVEL MATERIALS

([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*])

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(d) * * *

(2) Order-level materials are included in the definition of the term "material" in FAR clause 52.212-4 Alternate I, and, therefore, all provisions of FAR clause 52.212-4 Alternate I that apply to "materials" also apply to order-level materials.

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(7) * * *

(i) * * *

(C) A Contractor with an approved purchasing system, per FAR subpart 44.3, shall instead follow its purchasing system requirement and is exempt from the

requirements in paragraphs (d) (7) (i) (A) and (B) of this clause.

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[FR Doc. 2022-04287 Filed: 3/1/2022 8:45 am; Publication Date: 3/2/2022]